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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re J.S., a Person Coming Under
the Juvenile Court Law.

C067311

SACRAMENTO COUNTY DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD231138)

Plaintiff and Respondent,

v.

JENNIFER S.,

Defendant and Appellant.

Jennifer S. (mother) appeals from the juvenile court's findings and orders placing J.S. (the minor) with J.C. (father), the nonoffending, noncustodial parent, and terminating jurisdiction. (Welf. & Inst. Code, § 361.2.)¹ Mother contends (1) there was no substantial evidence to justify jurisdiction; (2) there was no substantial evidence that returning the minor

¹ Undesignated statutory references are to the Welfare and Institutions Code.

to mother's custody would cause detriment; (3) no reasonable efforts were made to prevent the minor's removal from mother's custody; and (4) the court abused its discretion by placing the minor with father because he was only the adjudicated father, not the presumed father. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The section 300 petition filed by Sacramento County Department of Health and Human Services (the Department) alleged that mother's substance abuse problem endangered the seven-year-old minor. The minor's uncle found mother passed out in her apartment with an empty beer can beside her while the minor played outside unattended. After the uncle tried to rouse mother, she ordered him out. Police later found the minor at a neighbor's apartment. Mother was under the influence of alcohol and prescription medication.

At the initial hearing, the juvenile court found that J.C. was the alleged father. Mother said there was a child support order and a restraining order against him. The court ordered the minor detained and directed the Department to provide reunification services to mother, pending the jurisdiction/disposition hearing.

The jurisdiction/disposition report recommended ordering reunification services for mother and stated that father's whereabouts were unknown.

Mother denied substance abuse, calling the allegation "'ridiculous.'" She was on disability due to work-related

injuries. She drank a glass of beer or wine per day to help with chronic pain and had a medical marijuana card.

On the date of the minor's detention, mother claimed she was incoherent due to the dose of prescribed medication she had taken (750 milligrams of methocarbamol), which could have "'knocked out a horse.'"² She did not remember being on the floor; she might have fallen off the couch while napping. She kicked out the maternal uncle because he was not welcome, and when he did not leave she asked her neighbor to call the police. Mother admitted that the minor was at a neighbor's residence when the police came. Mother did not seem to understand why she was being referred to services.

The minor, who appeared appropriately dressed, clean, and healthy, said she enjoyed mother's visits. She indicated that she knew what happened on the date of her detention, but did not want to talk about it. At first she said she wanted to live with her mother, but then said, "'I'm safer here [at the Children's Receiving Home]. It's nice and I have friends here.'"

The maternal uncle told the police that although mother generally cared well for the minor, the incident leading to the minor's detention was not the only one of its kind. He had found mother in the same state eight to 12 months earlier from a

² Mother also said, however, that she had had two beers and was "over-exerted from the holidays."

similar combination of alcohol and pain medications; when hospitalized, mother had a high blood-alcohol level. He believed mother habitually combined alcohol and prescription drugs.

On the day of the incident he went over to wish mother a happy birthday. A few days before, she had gone to the hospital due to high blood pressure caused by pain and was prescribed additional pain medication. He thought she did not know she was not supposed to mix the medication with alcohol.

According to the police incident report, the officers knocked on mother's door for several minutes with no response, then contacted the next-door neighbor. The neighbor told the police the minor had knocked on the door and said her mother was passed out on the floor; the neighbor decided to watch the minor to "'keep her from all the drama.'" Mother, who had moved in next door a month earlier, "looks as if she is intoxicated 'just about every day.'"

Mother finally responded to knocks and invited the officers in, moving lethargically and speaking in a thick, slurred manner. She said she had had two beers. The officers found two 24-ounce "beer/energy drinks with 12 [percent] alcohol" in the kitchen sink. She showed the officers a bottle of hydrocodone prescribed five days prior; the prescription was for 20 pills and the bottle contained only one and a half pills. She also had a bottle of methocarbamol, a muscle relaxer, prescribed in a

30-pill bottle five days prior; she had seven pills left. She said she had taken both medications along with the alcohol.

The officers asked mother if she could call her parents to take care of the minor that evening; mother refused. Finding that mother could not care for the minor, the officers placed the minor in protective custody.

In the evening the officers were dispatched to the neighbor's home. They heard mother's apartment door slam and found her staggering down the stairs. They arrested her for public intoxication.

Interviewed by the Department over two weeks later, the neighbor said mother's conduct on the day of the incident was "'odd behavior and totally out of character.'" She and mother often watched their children in turns while the children played outside. Mother was usually very attentive to the minor, so the neighbor was surprised that mother was sleeping in the mid-afternoon. The neighbor now agreed that mother ordered the maternal uncle out of her apartment, then asked the neighbor to call the police. The neighbor knew mother had chronic pain, but did not know the details of her medication. According to the neighbor, mother had always been good to the minor and they clearly loved each other; it must have been the medication that caused her behavior that day.

Several prior reports to Child Protective Services (CPS), including two within the last year alleging alcohol and drug abuse, were deemed inconclusive or unfounded.

At a prejurisdiction status hearing, the juvenile court found J.C. was the adjudicated father.

An addendum report recommended providing services to both parents. The report noted that father sought custody under section 361.2, but recommended against it because he had no established relationship with the minor.³

Father claimed a DNA test proved he was the minor's biological father, but he was never in a committed relationship with mother (though she thought otherwise). He obtained an 18-month restraining order against mother in August 2004. After it expired, she obtained one against him.

Mother had kept father from seeing the minor on several occasions. The only time he was able to do so was on December 24 and 25, 2006, when mother and the minor stayed at his home overnight. That occasion ended with his arrest for misdemeanor domestic violence against mother, after he asked her to leave his home because she was "caus[ing] a scene in front of the children." He spent two days in jail and completed a 52-week batterers' program.

Father had divorced another woman before he began to see mother. He was now in a relationship with a third woman, who supported his desire to obtain custody of the minor.

³ The addendum report does not quote the statute or show awareness of its specific provisions.

Father had an alcohol problem after his divorce, but after attending AA meetings for three years he felt he now had no alcohol or substance abuse problem.

In a pretrial jurisdiction/disposition hearing, the juvenile court found father had been determined the minor's biological and adjudicated father in 2007. At the request of the Department and the minor's counsel, the court ordered the minor temporarily detained in father's custody. However, the court did not find him the presumed father because no evidence had yet been presented that he had received the minor into his home and held her out as his child or that mother had prevented him from doing so. (Cf. Fam. Code, § 7611, subd. (d).)

Father's pretrial statement requested custody of the minor and termination of the dependency. (§ 361.2, subds. (a), (b)(1).)

At the contested jurisdiction/disposition hearing, the parties did not present evidence. The Department and the minor's counsel supported father's position.

Mother's counsel objected to jurisdiction, but conceded that the allegation of the section 300 petition had been sustained.

As to disposition, mother's counsel argued that it was wrong "public policy-wise" to place the minor in father's custody and deny mother the chance to reunify, because mother had successfully raised the minor alone, had never been in

dependency court before, and had simply slipped up once (or if more than once, her prescription pain medication was partly responsible). Counsel acknowledged, however, that the application of section 361.2 was mandatory.

The juvenile court sustained the allegation of the section 300 petition, noting that the uncle's statement and the neighbor's original statement (which the court found more credible than her later retraction) were persuasive evidence of mother's long-standing substance abuse problem.

As to disposition, the court observed that mother had not only denied but ridiculed the substance abuse allegation. Her claim that the incident causing the minor's detention was a one-time event was "very disturbing," as was her attribution of unworthy motives to the maternal uncle.

The potential harm to the minor from mother's substance abuse problem and her unwillingness to acknowledge it was "huge." On the date of the minor's detention, law enforcement gave mother the chance to call her parents to come and take care of the minor, but mother refused. Furthermore, mother had not yet participated in any services.

The court disputed the claim of mother's counsel that applying section 361.2 under these circumstances would violate public policy, stating, "The public policy behind the law is that children need to be safe. And [the minor] wasn't safe, because when her mother passed out on the floor, horrible things could have happened to [the minor]." On the other hand, there

was no evidence that father could not parent the minor appropriately and responsibly; if he could, that was the best thing for the minor. If mother later changed her circumstances, she could seek a new order in family court.

The court ordered the minor placed in father's sole physical custody, with joint legal custody for the parents and supervised visitation at least once a week for mother. The court then terminated its dependency jurisdiction over the minor.⁴

The court specifically found orally and in writing that father was the minor's presumed father.

DISCUSSION

I. Sufficiency of the Evidence to Support Jurisdiction

Mother contends there was insufficient evidence to support jurisdiction. This point is forfeited because mother conceded jurisdiction in the juvenile court; despite her pro forma objection to jurisdiction, she submitted on the Department's

⁴ After ruling, the juvenile court allowed mother to make a statement. Mother reiterated her claim that her lapse on the date of the minor's detention was a one-time event brought on by an overdose of pain medication; she also claimed she had completed her drug and alcohol assessment, was taking parenting classes, and was not now using any pain medications. The court repeated its view that mother had a long-standing substance abuse problem and her minimization of that fact was cause for concern. The court also noted that mother had had the opportunity to present evidence to support her claims throughout the proceedings.

reports and acknowledged that the evidence was sufficient to sustain the allegation of the section 300 petition.

In any event, the contention lacks merit. We review insufficient evidence contentions under the substantial evidence standard of review, construing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling; we do not reweigh the evidence. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 450-451.) Here, the evidence, viewed most favorably to the jurisdictional finding, showed that mother endangered the minor due to a long-standing substance abuse problem she persisted in denying. Mother asks us to reweigh the evidence and construe it most favorably to herself, which we may not do.

II. Sufficiency of the Evidence of Risk of Detriment

Mother contends there was insufficient evidence of a substantial risk of detriment to the minor if the minor had been returned to mother's care at disposition. We disagree.

To remove a minor from a parent's custody at disposition, the juvenile court must find clear and convincing evidence that there is or would be a substantial danger to the minor's physical health, safety, protection, or physical or emotional well-being if the minor were returned home, and no reasonable means exist to protect the minor's physical health without removal. The fact that the court has exercised jurisdiction is *prima facie* evidence to support this finding. (§ 361, subd. (c)(1); *In re Jasmine G.* (2000) 82 Cal.App.4th 282, 284, 288.)

Even though the juvenile court was required to find clear and convincing evidence, we review its finding for substantial evidence. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.)

Mother's statement at the jurisdiction/disposition hearing confirmed that she continued to deny or minimize the substance abuse problem that had caused her to leave a seven-year-old child unsupervised for hours. Even if she had begun to participate in services (as she asserted without supporting evidence), it had not yet begun to change her attitude. Therefore, as the juvenile court expressly found, the minor's physical safety was at risk in mother's custody.

III. Reasonable Efforts

Mother contends the Department failed to make reasonable efforts to prevent or alleviate the need for removing the minor from mother's care. This contention is forfeited for failure to raise it below. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.)

After the juvenile court, at the initial hearing, ordered the Department to provide mother with reunification services, the Department drafted a case plan for mother, which is contained in the jurisdiction/disposition report; however, the signature line for mother is blank. The report also states that the social worker discussed the case plan with mother, but she did not seem to understand why she was being referred for services.

At the jurisdiction/disposition hearing, mother never argued that the Department had failed to provide her with services. On the contrary, she asserted she had been offered services and had taken part in them, albeit without producing evidence to support that assertion. Therefore, she may not now claim that the Department failed to prove its reasonable efforts. (*In re Christopher B.*, *supra*, 43 Cal.App.4th at p. 558.)

IV. Placement of the Minor with Father

Lastly, mother contends that the juvenile court abused its discretion by placing the minor with father under section 361.2 because the court did not find him to be the presumed father or maintain jurisdiction and direct an inspection of his home within three months. Mother misreads the record and misconstrues the statute.

If the juvenile court orders a minor removed from the custodial parent's home, and there is a nonoffending, noncustodial parent who desires to assume custody of the minor, the court must place the minor with the noncustodial parent unless doing so would be detrimental to the minor's safety, protection, or physical or emotional well-being. (§ 361.2, subd. (a).) Here, the court found that father was a nonoffending, noncustodial parent and there was no evidence that placing the minor with him would cause detriment to the minor.

Under section 361.2, subdivision (b), the court has three options: (1) The court may order that the noncustodial parent

become the minor's legal and physical custodian and terminate dependency jurisdiction. (§ 361.2, subd. (b)(1).) (2) The court may order that the noncustodial parent assume custody subject to the court's jurisdiction and require a home visit within three months, but need not do so before selecting the options provided in section 361.2, subdivisions (b)(1) or (b)(3). (§ 361.2, subd. (b)(2).) Or, (3) the court may order that the noncustodial parent assume custody subject to the court's supervision, along with ordering reunification services to the other parent. (§ 361.2, subd. (b)(3).)

So far as mother asserts that the juvenile court erred by not maintaining jurisdiction and requiring a visit to inspect father's home within three months, mother is mistaken. As we have shown, the statute does not require this order as a prerequisite to making the noncustodial parent the physical and legal custodian and terminating jurisdiction.

So far as mother asserts that the order was erroneous because only a presumed father is entitled to custody and the court did not find father to be the presumed father (see *In re Zacharia D.* (1993) 6 Cal.4th 435, 454; *In re E.O.* (2010) 182 Cal.App.4th 722, 726-727; *In re Jerry P.* (2002) 95 Cal.App.4th 793, 801), mother is mistaken again. The court orally adopted the findings proposed in the addendum report, which included the finding that father was the presumed father, and thereafter entered those findings in writing.

It is not clear whether mother means to assert that the evidence does not support this finding because father had no prior relationship with the minor. If so, we disagree.

To qualify as a presumed father under Family Code section 7611, subdivision (d), an alleged father must receive the child into his home and openly hold the child out as his natural child. However, the failure to bring the child into his home may be excusable if he was frustrated from doing so by circumstances beyond his control, such as the mother's actions to prevent it. (*In re Andrew L.* (2004) 122 Cal.App.4th 178, 191; *In re Jerry P.*, *supra*, 95 Cal.App.4th at pp. 807, 811.) Father told the Department that mother consistently prevented him from seeing the minor, except for one day in the minor's life. The court impliedly accepted this excuse as sufficient.

DISPOSITION

The findings and orders of the juvenile court are affirmed.

_____, BUTZ, J.

We concur:

_____, ROBIE, Acting P. J.

_____, MAURO, J.